THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.26864 OF 2006

DATED 20th MARCH, 2007

BETWEEN:

Smt B.Rajitha and another.

… Petitioners

AND

The Revenue Divisional Officer, Secunderabad Division,
Hyderabad District and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26864 OF 2006

ORDER:

The two petitioners allegedly purchased a house bearing No.1-27-66, admeasuring 60 square yards in survey No.21/1 situated at Tokatta Village, Tirumalaghere Mandal in Hyderabad District, from the third respondent under registered sale deed, dated 03.03.2004. The property is now presently leased out to Sri Sai Grammar School. They allege that a week prior to filing of the writ petition, second respondent informed that the land is resumed and possession would be taken as per the provisions of A.P.Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity). They were also informed that the third respondent sold the assigned land to the petitioners in contravention of the provisions of the Act. Thereafter, the first respondent issued a communication, dated 15.12.2006 directing the second respondent to take possession of the property by conducting Panchanama. Therefore, they filed the writ petition seeking invalidation of the said communication as being violative of principles of natural justice.

At the stage of preliminary hearing of the writ petition, first respondent filed the counter affidavit on behalf of respondents 1 and 2. The case projected is as follows. The D-Form patta certificate was issued in 1996 to third respondent in respect of the subject property. The assignee sold the property to the petitioners in 2004, who are running a school and thereby violated condition No.8(1) of D-Form patta. Therefore, symbolic possession was taken by the Mandal Revenue Inspector (MRO) on 09.11.2006 under a cover of Panchanama. By impugned order, the first respondent also instructed the second respondent to take possession. A reference is also made to the notices issued by the first respondent to the concerned parties. These notices are dated 18.10.2005 and 20.12.2005.

This Court has heard the learned counsel for the petitioners and learned Assistant Government Pleader for Revenue (General-T). Along with the counter affidavit, notices in Form-I purportedly issued under Rule 3 of the A.P. Assigned Lands (Prohibition of Transfers) Rules, 1977 (the Rules, for brevity) are annexed. As rightly pointed by the learned counsel for the petitioners, the notices addressed to the petitioners were sent to house bearing No.1-26-47, Bapujinagar, but not to address bearing house
No.1-27-66. Secondly, he points out that under the provisions of

Section 4 of the Act read with Rule 2(b) of the Rules, the authorized officer is Mandal Revenue Officer and the notices issued by the first respondent are non-compliant with the legal proposition. Thirdly, he submits that the said notices were not at all received by the petitioners and in any event, no orders are communicated to the petitioners by the competent authority resuming the land. To that effect, a reply affidavit is also filed.

After perusing the copies of the notices allegedly issued by first respondent, this Court holds that the notices issued by first respondent are without authority of law. It is only the MRO, who is entitled to issue notices because under Section 4-A of the Act, against an order of MRO passed under Section 4(1) of the Act, an appeal lies to the Revenue Divisional Officer (RDO). If the RDO himself initiates action, it would certainly defeat the valuable right of a person to file an appeal. Presumably for this reason, the MRO alone is designated as authorized officer. Secondly, the counter affidavit nowhere refers any order of the competent authority under Section 4(1) of the Act ordering resumption. In the absence of such order, the symbolic possession allegedly taken by the Mandal Revenue Inspector is of no avail.

In the result, the writ petition is disposed of, observing that unless and until appropriate action is taken under the provisions of the Act and the Rules, and appropriate order is passed by the MRO, the petitioners cannot be dispossessed. No costs.

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(V.V.S.RAO,J)

20.03.2007.
pln

Note: Issue CC by 25.03.2007.

(By order)
pln